

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 160

Introduced by Assembly Member Dababneh

January 21, 2015

An act to amend Sections 186.2 and 186.8 of the Penal Code, *and to amend Sections 6007 and 6009.2 of the Revenue and Taxation Code*, relating to criminal profiteering.

LEGISLATIVE COUNSEL'S DIGEST

AB 160, as amended, Dababneh. Criminal profiteering: ~~piracy, insurance fraud, and tax fraud.~~ *counterfeit labels: sales and use taxes.*

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes, including forgery and offenses relating to counterfeit of a registered mark. Existing law also defines organized crime for the purposes of these provisions.

This bill would include within the definition of criminal profiteering activity offenses relating to piracy, insurance fraud, and tax fraud, as specified. By expanding the list of offenses that may subject a person to prosecution for criminal profiteering activity, this bill would impose a state-mandated local program. The bill would also broaden the definition of organized crime to include any crime that is of a conspiratorial nature and that is achieved through planning and coordination of individual efforts.

Existing law provides for the distribution of the money forfeited and the proceeds from the sale of property forfeited for conviction in connection with a pattern of criminal profiteering activity.

This bill would, in any case involving a felony violation of a specified offense relating to piracy, insurance fraud, or tax fraud, require the proceeds to be distributed, at the discretion of the court, in a specified priority.

Existing law, the Sales and Use Tax Law, imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Existing law provides that a “retail sale” or “sale at retail” includes any sale by a convicted seller, as defined, of tangible personal property with a counterfeit mark on, or in connection with, that sale, regardless of whether the sale is for resale in the regular course of business. Existing law provides that “storage” or “use” includes a purchase by a convicted purchaser, as defined, of tangible personal property with a counterfeit mark on, or in connection with, that purchase, regardless of whether the purchase is for resale in the regular course of business.

Under this bill, a “retail sale” or “sale at retail” additionally would include any sale by a convicted seller of tangible personal property with a counterfeit label or an illicit label, as specified. The bill similarly would provide that “storage” and “use” additionally would include a purchase by a convicted purchaser of tangible personal property with a counterfeit label or an illicit label, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which generally conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws.

The amendments made by this bill would be incorporated into these laws.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.2 of the Penal Code is amended to
2 read:
3 186.2. For purposes of this chapter, the following definitions
4 apply:
5 (a) “Criminal profiteering activity” means any act committed
6 or attempted or any threat made for financial gain or advantage,
7 which act or threat may be charged as a crime under any of the
8 following sections:
9 (1) Arson, as defined in Section 451.
10 (2) Bribery, as defined in Sections 67, 67.5, and 68.
11 (3) Child pornography or exploitation, as defined in subdivision
12 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
13 prosecuted as a felony.
14 (4) Felonious assault, as defined in Section 245.
15 (5) Embezzlement, as defined in Sections 424 and 503.
16 (6) Extortion, as defined in Section 518.
17 (7) Forgery, as defined in Section 470.
18 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
19 and Section 337i, except the activities of a person who participates
20 solely as an individual bettor.
21 (9) Kidnapping, as defined in Section 207.
22 (10) Mayhem, as defined in Section 203.
23 (11) Murder, as defined in Section 187.
24 (12) Pimping and pandering, as defined in Section 266.
25 (13) Receiving stolen property, as defined in Section 496.
26 (14) Robbery, as defined in Section 211.
27 (15) Solicitation of crimes, as defined in Section 653f.
28 (16) Grand theft, as defined in Section 487 or subdivision (a)
29 of Section 487a.

- 1 (17) Trafficking in controlled substances, as defined in Sections
2 11351, 11352, and 11353 of the Health and Safety Code.
- 3 (18) Violation of the laws governing corporate securities, as
4 defined in Section 25541 of the Corporations Code.
- 5 (19) Offenses contained in Chapter 7.5 (commencing with
6 Section 311) of Title 9, relating to obscene matter, or in Chapter
7 7.6 (commencing with Section 313) of Title 9, relating to harmful
8 matter that may be prosecuted as a felony.
- 9 (20) Presentation of a false or fraudulent claim, as defined in
10 Section 550.
- 11 (21) False or fraudulent activities, schemes, or artifices, as
12 described in Section 14107 of the Welfare and Institutions Code.
- 13 (22) Money laundering, as defined in Section 186.10.
- 14 (23) Offenses relating to the counterfeit of a registered mark,
15 as specified in Section 350, or offenses relating to piracy, as
16 specified in Section 653w.
- 17 (24) Offenses relating to the unauthorized access to computers,
18 computer systems, and computer data, as specified in Section 502.
- 19 (25) Conspiracy to commit any of the crimes listed above, as
20 defined in Section 182.
- 21 (26) Subdivision (a) of Section 186.22, or a felony subject to
22 enhancement as specified in subdivision (b) of Section 186.22.
- 23 (27) Offenses related to fraud or theft against the state's
24 beverage container recycling program, including, but not limited
25 to, those offenses specified in this subdivision and those criminal
26 offenses specified in the California Beverage Container Recycling
27 and Litter Reduction Act, commencing at Section 14500 of the
28 Public Resources Code.
- 29 (28) Human trafficking, as defined in Section 236.1.
- 30 (29) Any crime in which the perpetrator induces, encourages,
31 or persuades a person under 18 years of age to engage in a
32 commercial sex act. For purposes of this paragraph, a commercial
33 sex act means any sexual conduct on account of which anything
34 of value is given or received by any person.
- 35 (30) Any crime in which the perpetrator, through force, fear,
36 coercion, deceit, violence, duress, menace, or threat of unlawful
37 injury to the victim or to another person, causes a person under 18
38 years of age to engage in a commercial sex act. For purposes of
39 this paragraph, a commercial sex act means any sexual conduct

1 on account of which anything of value is given or received by any
2 person.

3 (31) Theft of personal identifying information, as defined in
4 Section 530.5.

5 (32) Offenses involving the theft of a motor vehicle, as specified
6 in Section 10851 of the Vehicle Code.

7 (33) Abduction or procurement by fraudulent inducement for
8 prostitution, as defined in Section 266a.

9 (34) Offenses relating to insurance fraud, as specified in Sections
10 2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7, and 2117 of the
11 Unemployment Insurance Code, or offenses relating to tax fraud,
12 as specified in Sections 6452, 6455, 7152, 7153.5, 19705, 19706,
13 19708, 19721, 30471, 30472, 30480, and 60707 of the Revenue
14 and Taxation Code and Sections 2117.5, 2118, and 2118.5 of the
15 Unemployment Insurance Code.

16 (b) (1) “Pattern of criminal profiteering activity” means
17 engaging in at least two incidents of criminal profiteering, as
18 defined by this chapter, that meet the following requirements:

19 (A) Have the same or a similar purpose, result, principals,
20 victims, or methods of commission, or are otherwise interrelated
21 by distinguishing characteristics.

22 (B) Are not isolated events.

23 (C) Were committed as a criminal activity of organized crime.

24 (2) Acts that would constitute a “pattern of criminal profiteering
25 activity” may not be used by a prosecuting agency to seek the
26 remedies provided by this chapter unless the underlying offense
27 occurred after the effective date of this chapter and the prior act
28 occurred within 10 years, excluding any period of imprisonment,
29 of the commission of the underlying offense. A prior act may not
30 be used by a prosecuting agency to seek remedies provided by this
31 chapter if a prosecution for that act resulted in an acquittal.

32 (c) “Prosecuting agency” means the Attorney General or the
33 district attorney of any county.

34 (d) “Organized crime” means crime that is of a conspiratorial
35 nature and that is achieved through planning and coordination of
36 individual efforts. “Organized crime” also means crime committed
37 by a criminal street gang, as defined in subdivision (f) of Section
38 186.22. “Organized crime” also means false or fraudulent activities,
39 schemes, or artifices, as described in Section 14107 of the Welfare

1 and Institutions Code, and the theft of personal identifying
2 information, as defined in Section 530.5.

3 (e) “Underlying offense” means an offense enumerated in
4 subdivision (a) for which the defendant is being prosecuted.

5 SEC. 2. Section 186.8 of the Penal Code is amended to read:

6 186.8. Notwithstanding that no response or claim has been
7 filed pursuant to Section 186.5, in all cases in which property is
8 forfeited pursuant to this chapter and, if necessary, sold by the
9 Department of General Services or local governmental entity, the
10 money forfeited or the proceeds of sale shall be distributed by the
11 state or local governmental entity as follows:

12 (a) To the bona fide or innocent purchaser, conditional sales
13 vendor, or holder of a valid lien, mortgage, or security interest, if
14 any, up to the amount of his or her interest in the property or
15 proceeds, when the court declaring the forfeiture orders a
16 distribution to that person. The court shall endeavor to discover
17 all those lienholders and protect their interests and may, at its
18 discretion, order the proceeds placed in escrow for up to an
19 additional 60 days to ensure that all valid claims are received and
20 processed.

21 (b) To the Department of General Services or local governmental
22 entity for all expenditures made or incurred by it in connection
23 with the sale of the property, including expenditures for any
24 necessary repairs, storage, or transportation of any property seized
25 under this chapter.

26 (c) To the General Fund of the state or a general fund of a local
27 governmental entity, whichever prosecutes.

28 (d) In any case involving a violation of subdivision (b) of
29 Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution
30 of the proceeds provided for by subdivisions (b) and (c), the
31 proceeds shall be deposited in the county children’s trust fund,
32 established pursuant to Section 18966 of the Welfare and
33 Institutions Code, of the county that filed the petition of forfeiture.
34 If the county does not have a children’s trust fund, the funds shall
35 be deposited in the State Children’s Trust Fund, established
36 pursuant to Section 18969 of the Welfare and Institutions Code.

37 (e) In any case involving crimes against the state beverage
38 container recycling program, in lieu of the distribution of proceeds
39 provided in subdivision (c), the proceeds shall be deposited in the
40 penalty account established pursuant to subdivision (d) of Section

1 14580 of the Public Resources Code, except that a portion of the
2 proceeds equivalent to the cost of prosecution in the case shall be
3 distributed to the local prosecuting entity that filed the petition of
4 forfeiture.

5 (f) (1) In any case described in paragraph (29) or (30) of
6 subdivision (a) of Section 186.2, or paragraph (33) of subdivision
7 (a) of Section 186.2 in which the victim is a minor, in lieu of the
8 distribution provided for in subdivision (c), the proceeds shall be
9 deposited in the Victim-Witness Assistance Fund to be available
10 for appropriation to fund child sexual exploitation and child sexual
11 abuse victim counseling centers and prevention programs under
12 Section 13837. Fifty percent of the funds deposited in the
13 Victim-Witness Assistance Fund pursuant to this subdivision shall
14 be granted to community-based organizations that serve minor
15 victims of human trafficking.

16 (2) Notwithstanding paragraph (1), any proceeds specified in
17 paragraph (1) that would otherwise be distributed to the General
18 Fund of the state under subdivision (c) pursuant to a paragraph in
19 subdivision (a) of Section 186.2 other than paragraph (29) or (30)
20 of subdivision (a) of Section 186.2, or paragraph (33) of
21 subdivision (a) of Section 186.2 in which the victim is a minor,
22 shall, except as otherwise required by law, continue to be
23 distributed to the General Fund of the state as specified in
24 subdivision (c).

25 (g) In any case involving a felony violation of a crime specified
26 in paragraph (23) or (34) of subdivision (a) of Section 186.2, the
27 proceeds shall be distributed, at the discretion of the court, in the
28 following priority:

29 (1) To the victims of the crime.

30 (2) To cover the costs of investigation.

31 (3) To the General Fund of the state.

32 *SEC. 3. Section 6007 of the Revenue and Taxation Code is*
33 *amended to read:*

34 6007. (a) (1) A “retail sale” or “sale at retail” means a sale
35 for any purpose other than resale in the regular course of business
36 in the form of tangible personal property.

37 (2) When tangible personal property is delivered by an owner
38 or former owner thereof, or by a factor or agent of that owner,
39 former owner, or factor to a consumer or to a person for redelivery
40 to a consumer, pursuant to a retail sale made by a retailer not

engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

(b) (1) Notwithstanding subdivision (a), a “retail sale” or “sale at retail” shall include any sale by a convicted seller of tangible personal property with a counterfeit ~~mark on~~, *mark, a counterfeit label, or an illicit label on that property*, or in connection ~~with~~, *with* that sale, regardless of whether the sale is for resale in the regular course of business.

(2) For purposes of this subdivision, all of the following shall apply:

(A) A “convicted seller” means a person convicted of a violation under Section 350 or 653w of the Penal Code or Section 2318, 2319, or 2320 of Title 18 of the United States Code on or after the date of sale.

(B) “Counterfeit mark” has the same meaning as that term is defined in Section 2320 of Title 18 of the United States Code.

(C) “Counterfeit label” has the same meaning as that term is defined in Section 2318 of Title 18 of the United States Code.

(D) “Illicit label” has the same meaning as that term is defined in Section 2318 of Title 18 of the United States Code.

~~(E)~~

(E) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of, and Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, and Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code shall not apply to any person other than a convicted seller.

~~(F)~~

(F) Notwithstanding Article 2 (commencing with Section 6481) of Chapter 5, any notice of deficiency determination to a convicted seller shall be mailed within one year after the last day of the calendar month following the date of conviction.

SEC. 4. Section 6009.2 of the Revenue and Taxation Code is amended to read:

6009.2. (a) Notwithstanding Sections 6008, 6009, and 6009.1, “storage” and “use” each shall include a purchase by a convicted purchaser of tangible personal property with a counterfeit ~~mark on~~, *mark, a counterfeit label, or an illicit label on that property*,

1 or in connection ~~with~~, *with* that purchase, regardless of whether
2 the purchase is for resale in the regular course of business.

3 (b) “Convicted purchaser” means a person convicted of a
4 violation under Section 350 or 653w of the Penal Code or Section
5 2318, 2319, *or* 2320 of Title 18 of the United States Code on or
6 after the date of purchase.

7 (c) For purposes of this section, Chapter 5 (commencing with
8 Section 17200) of Part 2 of Division 7 of, and Article 1
9 (commencing with Section 17500) of Chapter 1 of Part 3 of
10 Division 7 of, the Business and Professions Code, and Title 1.5
11 (commencing with Section 1750) of Part 4 of Division 3 of the
12 Civil Code shall not apply to any person other than a convicted
13 seller.

14 (d) “Counterfeit mark” has the same meaning as that term is
15 defined in Section 2320 of Title 18 of the United States Code.

16 (e) “*Counterfeit label*” *has the same meaning as that term is*
17 *defined in Section 2318 of Title 18 of the United States Code.*

18 (f) “*Illicit label*” *has the same meaning as that term is defined*
19 *in Section 2318 of Title 18 of the United States Code.*

20 ~~(e)~~

21 (g) Notwithstanding Article 2 (commencing with Section 6481)
22 of Chapter 5, any notice of deficiency determination to a convicted
23 purchaser shall be mailed within one year after the last day of the
24 calendar month following the date of conviction.

25 ~~SEC. 3.~~

26 *SEC. 5.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.